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Nov. 19

CONCORD, N.H.

Mr. Vincent Dahlfred
Executive Secretary to the Governor
State House

Dear Sir:

You have inquired whether the Governor, with the advice and consent of the Council, is required to appoint a Police Commission for the City of Dover. This question is answered in the affirmative, and it is pointed out that the members of the Commission must be appointed on or before December 1, 1951.

Heretofore the City of Dover has been governed under a Charter offered by Laws 1947, c. 385 and thereafter accepted by the voters of the City in accordance with s. 53 of the charter cited. This Charter did not contemplate a Police Commission, rather, it abolished all boards and commissions in existence at the time of its adoption. This necessarily included the Police Commission provided for by Laws 1913, c. 148.

A new Charter was made available to the City of Dover in Laws 1949, c. 430. Provision was made for a referendum thereon at a special election to be held October 4, 1949 — and, if the new Charter should not then be accepted by the electorate, the question might be voted upon at any regular municipal election within the ten years immediately following July 6, 1949. At the regular municipal election held in November 1951, the new Charter was accepted.

The new Charter calls for the establishment of a Police Commission, to be appointed and to have the same powers, substantially, as that provided for in Laws 1913, c. 148. The provisions governing the Police Commission as found in the new Charter are as follows: (Pt VII, s. 33, as inserted by the Laws 1949, c. 430, s. 2).

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"Police Commission. (a) On or before December first, following the adoption of this charter, the governor shall with the advice and approval of the council, appoint and commission for the city of Dover a police commission consisting of three persons, one of whom shall hold office for one year, one for two years and one for three years from the first Wednesday in January, following the adoption of this charter, or until their successors are duly appointed and qualified. Said commissioners shall have been residents of the city at least five years immediately preceding the date of their appointment. Not more than two of said commissioners shall be of the same political party. The governor shall, annually on or before the first day of December thereafter, with the advice and approval of the council, appoint and commission one commissioner, who shall succeed the one whose term expires and who shall serve for three years from the first Wednesday in January unless sooner removed as hereinafter provided, and any vacancy in said board shall be filled in the same manner for the unexpired term.

(b) The governor with the advice and approval of the council shall have full power to remove any commissioner at any time.

(c) It shall be the duty of said police commissioners to appoint such police officers, constables and superior officers, as they may in their judgment deem necessary, and to fix their compensation.

(d) The compensation of the police commissioners shall be fixed by the city council.

(e) The police commissioners shall have authority to remove any officer at any time for just cause and after due hearing, which cause shall be specified in the order of removal.

(f) The police commissioners shall have full power to make all rules and regulations for the government of the police force and to enforce said rules and regulations."

You will note that reference is made in the quoted section to the time of the "adoption of this charter". This must be deemed to be the date on which the voters signify their desire that the 1947 Charter be rescinded and the new adopted in accordance with the provisions of s. 1 of the Laws of 1949, and not the date upon which the rescission should become effective. This matter must be considered because of the provision in s. 1 that "such rescission shall become effective on the first Wednesday of January next following [the] vote . . .".

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If it were held that the new Charter were not to be considered adopted within the meaning of Pt. VII, s. 33 of the new Charter until the effective date of rescission as quoted above, then the City would be without a Police Commission until the first Wednesday in January 1953.

Such unreasonable interpretation is not, however, required by the new Charter and the Act authorizing it. When the vote of the city is taken, and it is found that a majority of those voting on the question voted in favor of the new Charter, then, according to laws of 1949, c. 430, s. 1, "the present charter shall be declared to have been rescinded"; although as noted above, "such rescission shall become effective on the first Wednesday next following such vote", it is clear that this is merely an administrative device to provide that the City shall not be without a government until, in accordance with the new Charter, a new government made up of officials elected and appointed as provided by law may be placed in office and be prepared to function. Further support for the view that the old Charter is in law rescinded and the new adopted at the time of the municipal election is found in Laws 1949, c. 430, s. 2, where provision is made for the election of city officers "if the present city charter is rescinded at a regular municipal election".

It is therefore my conclusion that the Governor, with the advice and consent of the Council, should, on or before December 1, 1951, appoint a Police Commission for the City of Dover in accordance with the section of the Charter which is quoted above.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM